

**AGREEMENT TO CONSTRUCT SUBDIVISION IMPROVEMENTS
THIRD PARTY TRUST**

Subdivision Case No. _____

This Agreement is made and entered into by and between:

_____, (“Subdivider”),
_____, (“Trustee”),
as Trustee under Trust No. _____, and the CITY OF TUCSON, ARIZONA, a municipal corporation (“City”). Subdivider, Trustee, and City are sometimes collectively referred to in this Agreement as “the Parties”.

RECITALS

A. Subdivider intends to subdivide the property more fully described in Exhibit A attached to and incorporated in this Agreement by this reference (“the Property”). The Property is the subject of a subdivision plat identified as:

_____,
recorded in the Office of the Pima County Recorder in Book _____ of Maps and Plats,
Page _____ (“the Subdivision”); and

B. The Parties wish to establish specific terms, conditions and guidelines to assure completion of the required subdivision improvements in compliance with the provisions of A.R.S. § 9-463.01(C)(8) and City Development Standard No. 1-04.0; and

C. City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of substandard subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

D. This Agreement inures to the benefit of the Parties and is not executed for the benefit of third parties, such as, but not limited to, materialmen, laborers, or others providing work, services or materials for the Subdivision, or lot or home purchasers in the Subdivision.

AGREEMENT

NOW, THEREFORE, based on the foregoing recitals, which are incorporated here as the intention of the Parties in entering into this Agreement, and in consideration of the City’s approval of the final plat of the Subdivision, the Parties agree as follows:

1. Construction of subdivision improvements. Subdivider shall construct and install, at no expense to City, all subdivision improvements described in Exhibit B attached to and incorporated in this Agreement by this reference (“the Improvements”). Subdivider’s obligation to complete the Improvements arises as of the date of this Agreement, is independent of any obligations of the City, and is not conditioned upon the sale of any lots or improvements within the Subdivision. Nothing in this Agreement shall be construed as an undertaking by the Trustee to install, to guarantee the installation of, or to indemnify any other person for the installation of the Improvements.

2. Existing utilities. Any relocation or modification of existing utilities or public improvements necessary to construct the Improvements shall be done at no expense to the public. Subdivider’s performance of this requirement shall be considered in determining whether to release assurances under Paragraphs 11 and 12.

3. Assurance of construction. This Agreement is submitted as an assurance that Subdivider will construct the Improvements as required by A.R.S. § 9-463.01(C)(8) and the City Development Standard No. 1-04.0.

4. Start of construction. Subdivider shall begin construction of the Improvements within six months of the date of this Agreement.

5. Diligence. Subdivider shall diligently pursue completion of the Improvements. Subdivider's failure to do substantial work on the Improvements for a period of thirty consecutive calendar days shall be presumptive evidence that Subdivider is failing to diligently pursue construction of the Improvements.

6. Completion of Improvements. Subdivider shall complete construction of the Improvements not more than two years after the date of this Agreement. The Improvements shall not be considered completed unless and until they have been constructed in accordance with all applicable plans and regulations and inspected by City for compliance with the plans and regulations.

7. Acceptance of Improvements. City shall not accept the Improvements or maintenance responsibility for the Improvements unless and until all of the following have occurred:

a. The Improvements have been completed in accordance with Paragraph 6 of this Agreement.

b. The Improvements and the right-of-way in which the Improvements are located have been dedicated or conveyed to City.

c. The City by formal action has accepted dedication or conveyance of the Improvements and the right-of-way in which they are located.

8. Warranty. Subdivider warrants that the Improvements will be free from defects for a period of one year from the date City accepts the maintenance of the last improvement completed by the Subdivider.

9. Security. To secure performance of its obligations under this Agreement, Subdivider has placed or will place ownership of the Property into a third party trust ("the Trust") that is subject to the terms of this Agreement. A copy of the trust agreement between Subdivider and Trustee is attached to and incorporated in this Agreement by this reference as Exhibit C ("the Trust Agreement"). Subdivider agrees that if the Trust Agreement is terminated for any reason before the completion of all of the Improvements, Subdivider shall tender to City 1) monetary assurances in an amount equal to City's estimate of the total cost to complete the Improvements, or 2) other assurances acceptable to City.

10. Limitation on transfer of title. Trustee shall not convey title to the Property or any portion of the Property without obtaining prior written approval from City in the form of a release of assurance signed by the City Engineer.

11. Release of assurances. The obligations of Subdivider and Trustee under this Agreement shall be released, and a release of assurance issued by the City Engineer, only upon Subdivider's satisfactory completion and City's acceptance of the Improvements in accordance

with Paragraph 6, or Subdivider's tender and City's acceptance of substitute assurances for completion of the Improvements.

12. Partial release of assurances. City may issue a partial release of assurance, releasing some of the Property from this Agreement, if both of the following have occurred:

a. All of the Improvements that are required for, benefit, or serve the released lots have been completed in accordance with Paragraph 6 of this Agreement; and

b. City determines that the released lots and the Improvements that are required for, benefit, or serve the released lots can be used and maintained separately from the Improvements that are not yet completed.

13. Substitution of assurances. Subdivider may submit substitute assurances in a form and amount acceptable to City at any time Subdivider is not in default of this Agreement.

14. Contracts for sale. Notwithstanding Paragraph 10, Trustee may enter into a contract or a deposit receipt agreement for the sale of the Property or any portion of the Property if the contract or agreement clearly states that no portion of the Property shall be conveyed until Subdivider's obligations under this Agreement are fully performed.

15. Bulk sales. Notwithstanding Paragraph 10, Trustee may sell and convey all of the Property in one transaction to a single purchaser who has tendered to City satisfactory assurances for the completion of the Improvements.

16. Conveyance out of trust for the purpose of encumbrance. Notwithstanding Paragraph 10, Trustee may convey all or part of the Property to Subdivider or to a beneficiary of the Trust solely for the purpose of encumbering the Property, provided that the Property is thereafter immediately reconveyed into the Trust. Any person or entity who records an encumbrance or security agreement against all or any portion of the Property shall be subject to the obligations of this Agreement.

17. City's option upon default. In addition to any other remedies, if Subdivider defaults on its obligations under this Agreement, City may at its sole discretion prepare and record a re-plat of the Property, eliminating the Improvements that have not been constructed and the lots or parcels served by those Improvements. Subdivider hereby authorizes City to execute on behalf of Subdivider all documents necessary to re-plat the Property. The re-plat may exclude any dedications already in use by the public or for utilities needed to serve the portions of the Subdivision which are not re-platted. Subdivider shall pay the reasonable costs incurred to re-plat the Property. City shall give thirty calendar days notice to Subdivider and Trustee before initiating any action to re-plat the Property or any portion of Property.

18. Issuance of permits. City shall not issue any permit for development of the Property or any portion of it, except permits for the completion of the Improvements, unless the Improvements that serve the portion of the Property for which the permit is sought have been completed or are secured by acceptable assurances on file with City.

19. Termination. This Agreement shall remain in full force and effect until one of the following has occurred:

a. All the Improvements have been completed and accepted by the City Engineer as evidenced by a written full release of assurances from the City Engineer.

b. Subdivider has tendered substitute assurances acceptable to City for the completion of the Improvements.

c. A new subdivision plat has been recorded for the Property in compliance with any and all applicable laws and regulations.

20. **Binding effect.** If for any reason the legal or beneficial title to the Property changes without the City's prior approval of substitute assurances or issuance of a release of assurance, this Agreement shall remain binding upon the Parties and their respective successors and assigns. This paragraph shall not be construed as a waiver of the limitation on the transfer of title contained in Paragraph 10 or the requirements for release of assurance or substitute assurance contained in Paragraphs 11, 12, and 13.

21. **Severability.** If any portion of this Agreement is found to be invalid, such finding will not affect the validity of the remainder of this Agreement and to this end the provisions of this Agreement are severable.

22. **No waiver.** No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to be a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Subdivider; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default of the same type. City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by Subdivider.

23. **Subdivider's notice of changes.** Subdivider agrees to provide written notice to City at least ten calendar days before the occurrence of 1) a change of name, corporate identity or address of Subdivider or Trustee; 2) intent to transfer, or a transfer of title to the Property by deed, contract or operation of law; 3) the foreclosure of a lien against the Property or a portion of the Property, 4) the filing of a voluntary or involuntary petition of bankruptcy respecting Subdivider or affecting the Subdivision; 5) any other event that may affect performance of the Parties under this Agreement.

24. **Notices, addresses, and change of address.** Any notice required under this Agreement shall be complete when sent via First Class Mail or hand delivered to the following addresses. Any of the Parties may change their address for purposes of notice under this Agreement by mailing a notice of change of address to the other parties.

Subdivider: _____

Trustee: _____

City: City of Tucson Development Services Center
201 North Stone Avenue
P.O Box 27210
Tucson AZ 85726

25. Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last of the Parties to sign this Agreement or the date of the City's approval of the final plat of the Subdivision, whichever occurs last.

26. Effect of failure to transfer ownership of the land. If ownership of the land is not transferred to Subdivider and Trustee, or if this Agreement does not become effective for any other reason, then the Existing Agreement shall remain in full force and effect.

"SUBDIVIDER":

Printed name of corporation or entity, if applicable

By: _____
Signature of Principal or authorized agent

Printed name of signer

Its: _____
Title of signer

ATTEST:

By: _____
City Clerk

"TRUSTEE":

Printed name of corporation
As Trustee under Trust No. _____
and not in its corporate capacity

By: _____
Signature of trust officer

Printed name of trust officer

Its: _____
Title of signer

"CITY":

CITY OF TUCSON, ARIZONA

By: _____
Mayor

STATE of _____ ss. _____)
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ of _____, a corporation organized and existing under the laws of the State of _____, on behalf of the corporation ("Subdivider").

My Commission Expires: _____

Notary Public

STATE OF _____ ss. _____)
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ of _____, a corporation organized and existing under the laws of the State of _____, on behalf of the corporation, as Trustee under Trust No. _____ and not in its corporate capacity ("Trustee").

My Commission Expires: _____

Notary Public

Approved as to form this _____ day of _____, 20____.

Assistant City Attorney